Filed 10/11/16 In re J.M. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.M., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	G053490 (Super. Ct. No. DP026190) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * *

INTRODUCTION

A juvenile court terminated family reunification services for M.M. (Mother) as to her then one-year-old daughter, J.M. Mother argues the juvenile court prejudicially erred in failing to appoint a guardian ad litem for Mother before terminating those services.

We affirm. The record is replete with evidence of Mother's history of mental illness, which includes a diagnosis of bipolar I disorder with psychotic features, multiple instances of involuntary hospitalizations, and bizarre behavior during the juvenile court proceedings in this case. The record also contains evidence showing Mother appeared to understand the nature of the juvenile court proceedings and shows she appropriately participated in them. We do not need to decide, however, whether the juvenile court erred by failing to appoint a guardian ad litem for Mother because, even assuming error, Mother has failed to show any error was prejudicial.

BACKGROUND

I.

THE AMENDED JUVENILE DEPENDENCY PETITION

In May 2015, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition which, as amended in July 2015 (the amended petition), alleged that then two-month-old J.M. came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b) (failure to protect). (All further statutory references are to the Welfare and Institutions Code unless otherwise specified.) The amended petition alleged that Mother engaged in a physical altercation with the maternal grandmother while she was holding J.M. Law enforcement officers described Mother's behavior as "violent," and Mother was "subsequently involuntarily psychiatrically hospitalized pursuant to Welfare and Institutions Code section 5150."

The amended petition further stated Mother has unresolved mental health issues. She had been diagnosed as suffering from bipolar disorder with psychotic features and has been involuntarily psychiatrically hospitalized on approximately 13 occasions. She also has a history of noncompliance with her prescribed psychotropic medication. Mother was seeking mental health treatment.

The amended petition also alleged Mother has a criminal history and an unresolved domestic violence problem with J.M.'s father (Father).[1] Law enforcement officers had responded to multiple incidents of Mother and Father engaging in physical altercations.

II.

MOTHER PLEADS NO CONTEST TO THE ALLEGATIONS OF THE AMENDED PETITION, WHICH ARE FOUND TRUE BY THE JUVENILE COURT; MOTHER SUBMITS TO TWO COURT-ORDERED EVIDENCE CODE SECTION 730 EVALUATIONS; THE COURT ORDERS, INTER ALIA, THAT MOTHER RECEIVE REUNIFICATION SERVICES.

At the jurisdiction hearing, Mother pleaded no contest to the allegations of the amended petition. The juvenile court found a factual basis for the plea and found the allegations of the amended petition true by a preponderance of the evidence. The court ordered two Evidence Code section 730 evaluations for Mother.

Mother was first evaluated by psychologist Dr. Alan D. Liberman, who stated in his evaluation report that, in addition to Mother suffering from bipolar I disorder, he suspected Mother suffered from posttraumatic stress disorder that was caused by her older adoptive brother's sexual and physical abuse of her when she was in elementary school. Liberman stated Mother's bipolar I disorder is "a chronic condition that can be disabling characterized by periods of mood instability defined by the occurrence of at least one manic episode and commonly characterized by repeated

[1] Father is not a party to this appeal. We only refer to him as relevant to the issues presented in this appeal.

episodes of major depression." He further stated Mother "has had periods of stability. For example she was able to complete college, but she has also had significant periods of mental instability characterized by violent and delusional behavior, resulting in numerous psychiatric hospitalizations." Liberman reported that Mother acknowledged she had anger management problems "but blamed her medication for this and all her psychiatric hospitalizations, claiming she was allergic to the medications." He concluded Mother's mental disorder rendered her incapable of benefiting from reunification services unless she took her prescribed medication and continued counseling services.

Mother was also evaluated by psychologist Dr. Ryan J. Jordan. In his evaluation report, Jordan described Mother as having intelligence in the average range and "alert and oriented to person, place, time, and situation." He stated he believed her "thought processes were mostly logical and linear." Jordan further stated that, notwithstanding Mother's diagnosis of having "a severe mental illness, Bipolar I Disorder, most recent episode Manic with psychotic features," coupled with the fact that the court required her to accept treatment for this illness, "she indicated [she was] no longer participating in any form of mental health care. Additionally, she is not taking prescribed psychotropic medications for her illness and, according to the records, has an extensive history of medication non-compliance even when actively involved in mental health treatment."

Jordan concluded that given Mother's "untreated severe mental illness, her history of treatment non-compliance and psychiatric decompensation leading to involuntary hospitalization, her reported unpredictability and violence during psychiatric decompensation, and her unsafe/unstable home environment, the potential for abuse/neglect appears unreasonably high at this time." (Underscoring omitted.) He stated Mother's "untreated mental illness continues to interfere with her ability to effectively and safely parent [J.M.] and also "renders her incapable of benefitting from reunification services within the next 12 months." (Underscoring omitted.)

At the disposition hearing on September 1, 2015, after considering and accepting into evidence, inter alia, Liberman's and Jordan's Evidence Code section 730 evaluation reports, the juvenile court declared J.M. a dependent child of the court and vested custody with SSA. The court also ordered reunification services for Mother. The court ordered Mother to sign releases of medication information. Mother's case plan required that she undergo a medication evaluation by a board-certified psychiatrist, participate in counseling, and complete parent education and anger management or domestic violence classes.

III.

MOTHER CONTINUES TO BE INVOLVED IN DOMESTIC VIOLENCE INCIDENTS, IS INVOLUNTARILY HOSPITALIZED AGAIN, AND DOES NOT TAKE PSYCHOTROPIC MEDICATION FOR BIPOLAR DISORDER.

In an interim review report dated December 7, 2015, SSA reported that from September through November 2015, on at least seven separate occasions, Mother contacted the police to come to her apartment; in most instances, Mother reported domestic violence with Father. The Santa Ana Police Department had responded to Mother's apartment a total of 12 times since September 1, 2015. The report stated Mother had refused to sign the case plan or other documents provided by SSA. On November 15, 2015, Mother was involuntarily hospitalized and placed on a section 5150 hold after she was "yelling and screaming on the street." Mother and her therapist reported that Mother was not taking psychotropic medications. Mother's visitation with J.M. was "sporadic" and she often did not confirm her visits. SSA recommended the termination of Mother's reunification services.

At a progress review hearing on December 8, 2015, Mother requested that homeopathic remedies fulfill the court's requirement that she receive traditional treatment for mental health issues. The court did not grant Mother's request. The court ordered

Mother "to follow psychiatric treatment including medications required by psychiatrist in addition to homeopathic treatments." SSA filed a request pursuant to section 388, seeking termination of Mother's reunification services and the setting of a permanency hearing.[2]

IV.

FOLLOWING THE SIX-MONTH REVIEW HEARING, THE JUVENILE COURT ORDERS MOTHER'S REUNIFICATION SERVICES TERMINATED AND SETS A PERMANENCY HEARING; MOTHER APPEALS.

At the six-month review hearing, the juvenile court considered, inter alia, Mother's testimony, multiple reports, and exhibits. The court found Mother had made minimal progress toward alleviating or mitigating the causes necessitating placement of J.M. The court stated: "Mother has an extensive mental health history having been diagnosed as long ago as 2004 as bipolar with psychotic features requiring involuntary psychiatric hospitalizations on more than 13 occasions." The court further stated: "The sad and frustrating assessment by the court is that [Mother] is an obviously intelligent young woman who loves her child but is a mother who remains in complete denial over the severity of her mental health issues and refuses to take western medication to treat and control her bipolar condition." The court observed that the maternal grandmother reported Mother is safe and rational while on her psychotropic medications; however, Mother "has steadfastly refused to take them since before the incident that brought this child before the court." Although Mother claimed that she had stopped taking lithium due to a severe allergic reaction, the court noted that no documentation of any such allergic reaction had been provided to the court.

[2] SSA withdrew its section 388 request after the court had not ruled on it before the six-month review hearing at which the court addressed the issues in the section 388 request.

The court acknowledged the Evidence Code section 730 evaluation reports. In each report, the evaluating psychologist opined that Mother would not likely benefit from family reunification services unless she remained compliant with her bipolar medication. The court continued: "While [M]other has complied with some of her case plan services including parenting classes and anger management classes and has visited her child on a consistent although still monitored basis, she has continued to dodge the focal issue that brought this matter to the court and the main concern this court has for the well-being of her child, her bipolar condition with psychotic features."

As for the court's requirement that Mother submit to a medication evaluation by a psychiatrist, the court stated it "believes that [M]other has apparently recently realized that unless she was seen by a psychiatrist her chances at this hearing were unfavorable as evaluation by a psychiatrist for medication evaluation was an integral part of her case plan to reunite with her child." The court also stated that Mother had "irregular contact" with a psychiatrist whom she had not seen since her evaluation. She refused to execute an unrestricted referral for SSA to interact with the psychiatrist and confirm she had seen a psychiatrist. The court noted the psychiatrist whom Mother had seen likely had minimal, if any, historical information on Mother's bipolar condition or prior treatment. When asked why she had to be seen, Mother reported to the psychiatrist that she had no mental health symptoms. The court stated, "[b]ased on that limited interaction[,] no medications were prescribed and voila, [M]other claims compliance with the case plan and psychiatric evaluation. This gamesmanship is revealing."

The court further found: "While perhaps not perfect in their interactions with [M]other, [SSA] has acted diligently and reasonably in attempting to help [M]other address her bipolar condition. Rather than embrace this offered assistance, [M]other has been antagonistic and defiant with the social workers. She has to date indicated that she will not take psychotropic medications. [¶] Unless [M]other participates in a complete

psychiatric evaluation for her long-standing bipolar condition with a psychotropic medication evaluation after a thorough and complete history is provided to that physician, the court believes that [M]other will continue to be a significant risk of injury and harm to her child. [¶] She has not substantially complied with her case plan in this regard and apparently will not do so. Her bipolar condition with psychotic episodes manifested by aggression brought this matter before the court. Those episodes likely contributed to the history of documented domestic violence between [M]other and [F]ather. Mother's failure to obtain appropriate treatment for her bipolar condition is not the result of [SSA]'s failure to provide reasonable services in this regard. [¶] Based on these factors it is the opinion of this court that [SSA] has met its burden of proof with respect to the termination of her [family reunification] services and finds that further services to [M]other would not be productive and orders them terminated."

Mother appealed.

DISCUSSION

Code of Civil Procedure section 372, subdivision (a)(1) provides in part: "When a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case." In *In re M.F.* (2008) 161 Cal.App.4th 673, 678-679, the appellate court explained: "Although provisions of the Code of Civil Procedure 'do not automatically extend to the dependency context,' 'in the absence of a dispositive provision in the Welfare and Institutions Code, we may look to these requirements for guidance. [Citation.]' [Citation.] Our Supreme Court has recognized that, '[i]n a dependency case, a parent who is mentally incompetent must appear by a guardian ad litem appointed by the court' (*In re James F.* (2008) 42

Cal.4th 901, 910 . . .), and we cannot conceive of any basis for applying a different rule to a minor parent in such proceedings."

"[A]n attorney for a parent in dependency proceedings functions in a traditional advocate role, because dependency proceedings 'are accusatory in nature as to the parent, although not as to the child. [Citation.]' [Citation.] As a result, counsel for a parent must receive input and direction from his or her client regarding many procedural and substantive issues, such as whether to seek reunification and whether to proceed by contested hearing. An attorney for a parent in dependency proceedings must have meaningful input from his or her client in order to advocate on the parent's behalf. Code of Civil Procedure section 372 recognizes that minors (as well as conservatees and individuals determined to be incompetent) are considered legally incapable of providing adequate direction to counsel. A guardian ad litem is necessary in such cases to stand in the role of the client." (*In re M.F.*, *supra*, 161 Cal.App.4th at pp. 679-680.)

As summarized *ante*, our record documents Mother's history of severe mental illness and her consistent refusal to follow medical advice. It also shows Mother's extensive participation in contested juvenile court proceedings, which included her testifying in this case. We do not need to decide whether the juvenile court erred by failing to appoint a guardian ad litem for Mother because even if such an error occurred, it was harmless.

A court's failure to appoint a guardian ad litem is not a jurisdictional defect, but is subject to review for prejudice. (*In re James F.* (2008) 42 Cal.4th 901, 911-913; *In re M.F.*, *supra*, 161 Cal.App.4th at p. 680; *In re A.C.* (2008) 166 Cal.App.4th 146, 154.) We do not set aside the judgment unless a different result would have been probable had the error not occurred. (*In re Lisa M.* (1986) 177 Cal.App.3d 915, 920, fn. 4.)

Mother makes no showing of how the outcome of this case might have been different had the juvenile court appointed a guardian ad litem for her. Mother does not challenge any of the evidence that was presented to the court, does not argue

insufficient evidence supports any of the court's findings supporting the order terminating her reunification services, and does not argue she was unable to provide adequate direction to her attorney. Mother's attorney never requested that the court consider appointing a guardian ad litem for Mother.

Mother does not offer any explanation of how a guardian ad litem might have assisted her case. Instead, in her opening brief, Mother's entire prejudice argument is contained in the following conclusory paragraph: "The absence of a GAL [(guardian ad litem)] negatively affected Mother's receipt of reunification services. There is a reasonable possibility the assistance of a GAL would have produced an outcome that was positive for Mother. Her unfiltered and 'bizarre testimony' plus her actions that raised safety concerns could have been moderated to a considerable extent through the interposition of the GAL. Instead, the GAL's absence led directly to the determination that Mother would not benefit from additional reunification services."

Our record shows the juvenile court offered Mother reunification services at the disposition hearing, notwithstanding her long history of not taking the medication that was necessary to manage her bipolar disorder. Both psychologists who conducted Evidence Code section 730 evaluations of Mother concluded that she would not benefit from reunification services unless she took medication for her bipolar disorder. The court terminated reunification services at the six-month review hearing because it became clear to the court that Mother would not take any such medication or otherwise comply with her case plan. Mother does not argue otherwise. Therefore, even if the court appointed a guardian ad litem for Mother, on this record, there is no probability the court would have continued reunification services at that point in time.

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.